



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00643
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Kent, Esq., Department Counsel  
For Applicant: *Pro se*

02/01/2024

**Decision**

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns stemming from his illegal use of marijuana. Clearance is denied.

**Statement of the Case**

On March 28, 2023, the Department of Defense Consolidated Adjudications Services (DOD CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H, drug involvement, explaining why it was unable to find it clearly consistent with the national security to grant him security clearance eligibility. The DOD CAS took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

In an answer, dated April 3, 2023, Applicant admitted the SOR allegations and requested a decision based on the evidence on file instead of a hearing. On March 28, 2023, Department Counsel prepared a file of relevant material (FORM), a brief with four

attachments supporting the Government's contention that Applicant should be precluded from having access to classified information. Applicant received the FORM on April 28, 2023, and was notified that he had 30 days to file a reply. Applicant did not file a response.

### **Findings of Fact**

Applicant is a 35-year-old, married man. He graduated from college in 2010. After attending graduate school between 2014 and 2019, he earned a master's degree and a doctorate. (Item 1 at 11) Since September 2022, he has been working as a technical writer for a defense contractor. (Item 1 at 13)

Applicant used marijuana recreationally about ten times between 2007 and 2021, as alleged in subparagraph 1.a. (Item 4 at 7) At some time in 2021, after being diagnosed with a chronic arthritis condition, he began purchasing marijuana, as alleged in subparagraph 1.b, through a physician's prescription. (Item 1 at 33) Since then, Applicant has been using prescription marijuana "a couple of times a week to treat [his] chronic pain." (Item 3 at 33) In addition to alleviating his chronic arthritis, the medical marijuana helps ameliorate his depression, anxiety, and panic attacks. (Item 3 at 31) He was diagnosed with depression in 2013. (Item 3 at 31) Applicant intends to continue using marijuana in the future, as alleged in subparagraph 1.c. (Item 2 at 1)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

## Analysis

### Guideline H, Drug Involvement and Substance Abuse

The security concerns about drug involvement and substance abuse are set forth in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Applicant's history of illegal drug use triggers the application of AG ¶¶ 25(a), "any substance abuse." His intent to continue using marijuana in the future despite its illegality under federal law triggers the application of AG ¶ 25(g), "expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse." Marijuana is a Schedule I drug under the Controlled Substances Act. (21 U.S.C. § 812(c)) As such, there are no currently accepted medical uses in treatment, and it cannot be dispensed under a prescription. (21 U.S.C. § 812(b)(1)(B); *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483, 121 S.Ct. 1711, 149 L.Ed. 2d 722 (2001)) This is the case regardless of state law to the contrary. Consequently, given Applicant's stated intent to continue using marijuana, none of the mitigating conditions apply. I conclude that Applicant has failed to mitigate the drug involvement security concerns.

### Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

In reaching my decision, I considered the whole-person factors, particularly, Applicant's stated intention to continue the illegal conduct.

## **Formal Findings**

Formal findings for against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Marc E. Curry  
Administrative Judge